

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 380 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BAI JASUMATI WD/O JAYANTILAL CHUNILAL SHAH

Versus

MADHUSUDHAN GORDHANDAS SHAH

Appearance:

MR MC SHAH for Petitioners
NOTICE SERVED for Respondent No. 1
MR MJ PARIKH for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 09/02/2000

ORAL JUDGEMENT

1. The petitioners by filing this Civil Revision Application under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, (hereinafter to be referred as 'the Act'), challenge the judgment and decree dated July 26, 1983, passed by the learned Joint District Judge, Nadiad, in Regular Civil Appeal No.235 of 1980, by which the learned Jt.District Judge allowed the appeal partly filed by the petitioners by holding that the respondent No.1 do pay to the petitioners Rs.6600/- for the taxes over and above the amount decreed by the trial court.

2. Brief facts of the case are as under:

The petitioners are the owners and landlords of the suit premises bearing Tika No.10, City Survey No.517/A/1, Municipal Census No.1251/6 of Ward No.1 situated in Nadiad town. The first floor of the suit premises was let out to the respondent No.1 by registered rent note dtd.14.8.74 for three years at the rent of Rs.1100/- p.m. The taxes were to be borne by the tenant i.e. respondent No.1. The period of the premises let out was from 1.9.73 to 30.8.76. It is borne out from the record of the case that terrace portion of the suit premises was also let out to the respondent No.1 at the rent of Rs.200/- p.m., however, no rent note was executed for the terrace portion. It was agreed in the rent note that the respondent No.1 was liable to hand over possession of the leased premises to the petitioners on the expiry of three years. As per Clause 10 of the agreement, the respondent No.2 has stood as surety and had assured the petitioners that the tenant i.e. respondent No.1 shall pay the rent of the leased premises and shall hand over possession on the expiry of the period of lease. The respondent No.2 had also given an assurance by Clause.10 of the agreement (Exh.76) that he had undertaken the responsibility that respondent No.1 -tenant shall pay the rent regularly and shall hand over the possession on the expiry of the period of the lease. It may be mentioned that the leased premises were let out to the respondent No.1 for carrying on the business of lodging and boarding house. The respondent No.1 did not pay the monthly rent as agreed by an agreement Exh.76 and, therefore, the petitioners by a notice dated 9.9.76 terminated the lease. The respondent No.1 on the receipt of the notice did not comply it by paying the arrears of rent. No dispute about the standard rent of the leased premises was raised by the respondent No.1. The petitioners on the expiry of the period of notice filed Regular Civil Suit No.527 of 1976, in the court of the

Civil Judge (S.D.), Nadiad, for arrears of rent and possession of the suit premises against the respondent No.1 and respondent No.2 who had stood as surety for the due compliance of the agreement Exh.76.

3. The respondents No.1 and 2 contested the suit by filing their written statement at Exhs.31 and 36 respectively. It was contended that the petitioners had taken Rs.15,000/- from the respondent No.1 as deposit on condition to adjust the said amount towards the arrears of rent. In the written statement, a dispute was raised about the standard rent of the suit premises. The defendant no.2 i.e. respondent No.2 did not raise any dispute that the respondent No.1 had taken on lease the said premises on monthly rent of Rs.1100/- for the period of three years but declared his ignorance of the respondent No.1 having taken on lease the terrace premises at the monthly rent of Rs.200/-. The respondent No.2 denied that he was the guarantor of the respondent No.1 and the purpose of payment of rent and to hand over the possession of the leased premises on the expiry of the period of three years. It was contended that this liability imposed on him under the rent agreement Exh.76 was against public policy, null and void, and same was not binding. In the alternative the respondent No.2 pleaded that if he was held liable as a guarantor for due observance of the payment of the rent, taxes and of handing over the vacant possession after the period of three years then his liability would end on 31.8.1976.

4. On the rival pleadings of the parties, the learned trial Judge framed issues at Exh.37. The learned trial Judge on overall appreciation of oral as well as documentary evidence partly decreed the suit of the petitioners by holding that respondent No.1 shall pay Rs.9880/- to the petitioners as arrears of rent and shall hand over the possession of the first floor of the suit premises and the portion of terrace. The learned trial Judge further directed that the respondent No.1 shall pay future mesne profit at the rate of Rs.1300/- p.m. to the petitioners for illegal occupation on the suit premises. The learned trial Judge also partly decreed the suit against the respondent No.2 by directing him to pay Rs.550/-. The standard rent of the suit premises consisting of first floor was fixed at the rate of Rs.1100/- p.m. and the standard rent of the portion of the terrace of the suit premises was fixed at Rs.200/p.m.

5. The petitioners challenged the judgment and decree dated 30.10.1980, passed by the 3rd Jt.Civil Judge(S.D.), Nadiad, in Regular Civil Suit No.527 of 1976

in the District Court, Kheda at Nadiad, by filing Regular Civil Appeal No.235 of 1980. The above appeal was heard by learned Joint District Judge, Nadiad, who by his judgment and decree dated July 26, 1983, partly allowed the appeal by holding that the respondent No.1 do pay to the appellants Rs.6600/- for the taxes over and above the amount decreed by the trial court. The other claim of the petitioners were rejected. The said judgment and decree of the learned Jt.District Judge in Regular Civil Appeal No.235 of 1980 is challenged by the petitioners by filing this Civil Revision Application.

6. Learned Counsel for the petitioners Mr.M.C.Shah has take me through the entire record and proceedings of this case, and has submitted that the Courts below had not properly interpreted Clause 10 of the agreement dated 14th August, 1973, whereby the respondent No.2 had stood as the surety of due compliance of the payment of rent and taxes and of handing over the possession of the leased premises by the respondent No.1 to the petitioners. The learned Counsel further submitted that, as per Clause 10 of the agreement, the respondent No.2 should have been held liable for the payment of arrears of rent and taxes and of handing over the possession of the suit premises to the petitioners. Learned Counsel further submitted that the Courts below ought to have held that the liability of the respondent No.2 did not ceased on the expiry of the period of three years because in the submission of learned Counsel, the liability of the respondent No.2 continue till the possession of the suit premises were handed over to the petitioners. Learned Counsel for the petitioners therefore submitted that the Courts below should have held the respondent No.2 liable jointly and severally for the payment of arrears of rent and taxes alongwith the respondent No.1. Learned Counsel for the petitioners contended that the Courts below erred in not awarding arrears of rent and taxes upto 29th November, 1980, on which date the respondent No.1 had handed over the possession of the suit premises to the petitioners. Learned Counsel submitted that the Courts below erred in not passing the decree in favour of the petitioners-landlords for the rent due from the respondent No.1 for the period from 18.12.1976 to 29.11.1980 and, therefore, the revision application should be allowed by decreeing the arrears of rent upto the period 29.11.1980 to be recovered from the respondents no.1 and 2 jointly and severally.

7. Respondent No.1 is duly served but has not engaged any advocate or appeared in person and, therefore, the revision application has proceeded

ex-parte against the respondent No.1.

8. Learned Counsel for the respondent No.2

Mr.M.J.Parikh vehemently submitted that, the Courts below have properly interpreted Clause 10 of the said agreement, Exh.76, and as there were concurrent findings of fact this Court should not interfere with this revision application which is filed under section 29(2) of the Act. Learned counsel for the respondent No.2 in support of his submission places reliance of the decision reported in (1994) 6 SCC p.271 and AIR 1998 SC p.3325. Learned Counsel for the respondent No.2 further submitted that no error of law or material irregularity is pointed out to have been committed by the Courts below and, therefore, this revision application deserves to be dismissed.

9. The submission of the learned Counsel for the petitioners that the Courts below should have held respondent No.2 liable for the payment of rent and taxes. In my view, it is devoid of merits and deserves to be rejected. The respondent No.2 cannot be held liable on the expiry of the period of lease i.e. 3 years for the non-observance of the Clauses of the rent act and non-payment of arrears of rent and not handing over the possession of the suit premises to the petitioners. Such a clause in the agreement Exh.76 is, in my view, it is against the provisions of the Rent Act. Such a clause in rent note is unwarranted and uncalled for. There was so relationship of landlord and tenant between the petitioners and the respondent No.2. How can surety be held liable for the arrears of rent, taxes and mesne profits of the suit premises. The suit was filed by the petitioners for arrears of rent, taxes and for the possession of the suit premises from the respondent No.1 who was a statutory tenant under the rent act, no decree of arrears of rent and mesne profit or taxes could have been passed against the respondent No.2. Therefore, in my view, Courts below have not committed any error of law in not holding the respondent No.2 liable to make the payment of arrears of rent and taxes. Moreover, the Courts below had considered the terms and conditions of the agreement Exh.76 and had rightly come to the conclusion that the respondent No.2 cannot be held liable for the payment of arrears of rent and taxes. This being concurrent findings of fact based on proper interpretation of the agreement Exh.76 and the provisions of the Act as well as Transfer of Property Act. In my opinion, no error is pointed out to have been committed by the Courts below and, therefore, no case is made out by the petitioners to hold that the respondent No.2 was

jointly and severally liable to pay the amount of arrears of rent and taxes. The submission of the learned Counsel for the petitioners that the Courts below erred in not passing any decree of arrears of rent for the period 18.12.1976 to 29.11.1980 deserves and requires to be accepted. Decree for possession came to be passed by the trial court on October 30, 1980. The respondent No.1 has handed over the possession of the suit premises on November 29, 1980, as it becomes evident from the paragraph 8 of the judgment of the lower appellate court. The Courts below had not passed decree of arrears of rent against the respondent No.1 for the period December 18, 1976, to hand over the possession of the suit premises i.e. November 29, 1980. The trial court had already determined future mesne profit at the rate of Rs.1300/p.m., therefore, the Courts below ought to have passed the decree for the arrears of rent and taxes for the period 18.12.1976 to 29.11.1980. Therefore this petition deserves to be allowed to the extent that the petitioners shall be entitled to arrears of rent and taxes for the period from December 18, 1976, to November 29, 1980, to be recovered from the respondent No.1.

10. As a result for the foregoing discussion, this Civil Revision Application is partly allowed. The respondent No.1 is directed to pay the arrears of rent and mesne profit at the rate of Rs.1300/- p.m. for the period December 18, 1976, to November 29, 1980, to the petitioners. It is held that the respondent No.2 shall not be liable to pay the amount of arrears of rent and taxes as contended by the learned Counsel for the petitioners. Decree be drawn accordingly. Rule is made absolute to the extent indicated above with no order as to costs.

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